

United States Senate

August 21, 2018

The Honorable Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460

Dear Acting Administrator Wheeler:

Thank you for your testimony before the Senate Environment and Public Works Committee on Wednesday, August 1, 2018. Your appearance provided committee members with an important opportunity to hear from you on a number of critical issues and to raise concerns about how the EPA has been approaching its mission of protecting human health and the environment over the last eighteen months.

At the hearing, I expressed my particular concern regarding the EPA's implementation of the Toxic Substances Control Act (TSCA) as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act of 2016. I specifically highlighted the agency's decision not to consider all of the sources of exposure to potentially toxic chemicals that EPA is tasked with reviewing. In the amended TSCA law, EPA was told by Congress to assess risks associated with a chemical's "conditions of use" when determining whether the chemical presents an unreasonable risk of harm. These conditions of use are legally defined as the circumstances, as determined by the Administrator, under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of.

However, the problem formulations that EPA issued under your predecessor, Scott Pruitt, significantly narrowed the exposures to be considered for each condition of use when the agency evaluates the safety of the first ten chemicals chosen for review under TSCA. In fact, the EPA has prominently stated its intention to ignore certain known exposures to these chemicals, including exposures through pathways like air, water, and land. An example from the problem formulation for one of the first ten chemicals, trichloroethylene (TCE), is reproduced here (emphasis added):

As part of this problem formulation, EPA also identified exposure pathways under other environmental statutes; administered by EPA, which adequately assess and effectively manage exposures and for which long-standing regulatory and analytical processes already exist, i.e., the Clean Air Act (CAA), the Safe Drinking Water Act (SDWA), the Clean Water Act (CWA) and the Resource Conservation and Recovery Act (RCRA). EPA worked closely with the offices within EPA that administer and implement the regulatory programs under these statutes. In some cases, EPA has determined that chemicals present in various media pathways (i.e., air, water, land) fall under the jurisdiction of existing regulatory programs and associated analytical processes carried out under other EPA-administered

statutes and have been assessed and effectively managed under those programs. EPA believes that the TSCA risk evaluation should focus on those exposure pathways associated with TSCA uses that are not subject to the regulatory regimes discuss above because these pathways are likely to represent the greatest areas of concern to EPA. As a result, EPA does not plan to include in the risk evaluation certain exposure pathways identified in the TCE scope document.¹

This language is included in nearly all of the problem formulations for the first ten TSCA chemicals and is among the chief concerns expressed by chemical safety experts in response to the new problem formulations. In this month's hearing, I asked whether you, as the new Acting Administrator at EPA, would commit to comprehensively reviewing the risks of chemicals like TCE by including known releases of the chemicals into our air, water, and land. You responded that, while you would need to double check with the EPA chemicals office, it was your understanding that the EPA is looking at these types of pathways.

Unfortunately this is not the case, as you will learn when you speak with the EPA chemicals office and as demonstrated by the language from the TCE problem formulation above. Furthermore, the justification to ignore certain exposure pathways because the risks may be able to be managed by other environmental statutes such as the Clean Air Act and Clean Water Act is deeply concerning given the efforts by your agency to roll back or eliminate many regulations promulgated under those statutes.

I ask that you take the time to investigate these new TSCA problem formulations, and once you have done so, please respond in writing to the following questions no later than September 21, 2018:

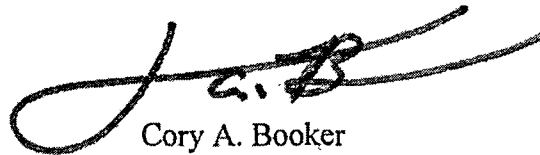
1. As part of the risk evaluation process, will you commit to comprehensively evaluating the risks of chemicals by including known releases of the chemicals into our air, water, and land?
2. After EPA completes a risk evaluation for a chemical, 15 U.S.C. 2608(b)(1) authorizes EPA to utilize other federal laws administered by EPA in coordination with TSCA to address risks to health or the environment that were identified in the risk evaluation. As outlined above, rather than following this sequence, EPA has now instead chosen to ignore in EPA's risk evaluation certain known exposures to toxic chemicals, including exposures through pathways like air, water, and land, simply because the exposure pathways are within the jurisdiction of other federal laws administered by EPA. What statutory authority within TSCA did EPA rely upon when it decided to ignore these known exposures in the risk evaluation process?
3. When the EPA decided that it would not consider air, water, and land exposure pathways in its TSCA risk evaluations, did the agency consider the disproportionately harmful impact that decision would have on vulnerable communities around the United States, including low-income communities, communities of color, and indigenous communities, as required under TSCA? Please provide any relevant documentation.

¹ U.S. Environmental Protection Agency. Problem Formulation of the Risk Evaluation for Trichloroethylene [CASRN: 79-01-6]. EPA Document #EPA-740-R1-7014. Office of Chemical Safety & Pollution Prevention. May 2018.

4. Will you commit that, moving forward, you will carefully consider the impact of the decisions that EPA is making on these communities?

The successful and bipartisan TSCA reform process that took place in 2016 was a major achievement of the Senate Environment and Public Works Committee, and I intend to ensure that this law is being implemented as we intended. Thank you for your attention to this critical chemical safety question.

Sincerely,

A handwritten signature in black ink, appearing to read "C. A. B.", with a large, sweeping flourish extending from the left side.

Cory A. Booker
United States Senator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

MAY 29 2019

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

The Honorable Cory A. Booker
United States Senate
Washington, D.C. 20510

Dear Senator Booker:

Thank you for the letter of August 21, 2018, to the U.S. Environmental Protection Agency (EPA) regarding implementation of the Toxic Substances Control Act (TSCA).

In developing the problem formulation documents for the first ten chemical substances subject to the TSCA risk evaluation process, EPA has worked closely with other EPA program offices and identified certain exposure pathways that are adequately assessed and effectively managed under other regulatory programs carried out under other EPA-administered environmental statutes. EPA does not expect to include those exposure pathways in the TSCA risk evaluations. This approach enables EPA to use resources efficiently, avoid duplicating regulatory efforts, and meet tight statutory deadlines.

In the case of trichloroethylene (TCE), EPA plans to exercise its discretion under TSCA section 6(b)(4)(D) to focus its analytical efforts on exposures that are likely to present the greatest concern and consequently merit a risk evaluation under TSCA, by excluding, on a case-by-case basis, those exposure pathways (i.e., air, water, land) that fall under the jurisdiction of other EPA-administered statutes for which long-standing regulatory and analytical processes already exist.

As part of risk evaluation, EPA is committed to following the statutory directive that EPA determine whether a chemical substance presents an unreasonable risk to potentially exposed or susceptible subpopulations. As stated in the TCE problem formulation document, "in the risk evaluation for TCE, EPA plans to analyze the following potentially exposed groups of human receptors: workers, occupational non-users, consumers, bystanders associated with consumer use and other groups within the general population who may experience greater exposure."¹

¹ See page 39 at: https://www.epa.gov/sites/production/files/2018-06/documents/tce_problem_formulation_05-31-31.pdf.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Sven-Erik Kaiser in the EPA's Office of Congressional and Intergovernmental Relations at kaiser.sven-erik@epa.gov or at (202) 566-2753.

Sincerely,

A handwritten signature in black ink, reading "Alexandra Dapolito Dunn". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Alexandra Dapolito Dunn, Esq.
Assistant Administrator